

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 10

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO SALES AND USE TAX ON AIRPLANES; AMENDING SECTION 63-3621, IDAHO CODE, TO EXEMPT FROM SALES AND USE TAX CERTAIN PERSONALLY OWNED AIRCRAFT ACQUIRED OUT OF STATE AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 63-3622GG, IDAHO CODE, TO LIMIT THE SALES AND USE TAX EXEMPTION FOR AIRCRAFT USED TO PROVIDE PASSENGER OR FREIGHT SERVICES FOR HIRE SUBJECT TO SPECIFIED QUALIFICATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX – EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other

1 places of business in this state, and such other information as the state tax commission may
2 require.

3 (e) For the purpose of the proper administration of this act and to prevent evasion of the
4 use tax and the duty to collect the use tax, it shall be presumed that tangible personal property
5 sold by any person for delivery in this state is sold for storage, use, or other consumption in
6 this state. The burden of proving the sale is tax exempt is upon the person who makes the
7 sale unless he obtains from the purchaser a resale certificate to the effect that the property
8 is purchased for resale or rental. It shall be presumed that sales made to a person who has
9 completed a resale certificate for the seller's records are not taxable and the seller need not
10 collect sales or use taxes unless the tangible personal property purchased is taxable to the
11 purchaser as a matter of law in the particular instance claimed on the resale certificate.

12 A seller may accept a resale certificate from a purchaser prior to the time of sale, at the
13 time of sale, or at any reasonable time after the sale when necessary to establish the privilege of
14 the exemption. The resale certificate relieves the person selling the property from the burden of
15 proof only if taken from a person who is engaged in the business of selling or renting tangible
16 personal property and who holds the permit provided for by section 63-3620, Idaho Code, or
17 who is a retailer not engaged in business in this state, and who, at the time of purchasing
18 the tangible personal property, intends to sell or rent it in the regular course of business or is
19 unable to ascertain at the time of purchase whether the property will be sold or will be used for
20 some other purpose. Other than as provided elsewhere in this section, when a resale certificate,
21 properly executed, is presented to the seller, the seller has no duty or obligation to collect
22 sales or use taxes in regard to any sales transaction so documented regardless of whether the
23 purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation
24 to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for
25 making any report or disclosure of information required or permitted under this chapter.

26 The resale certificate shall bear the name and address of the purchaser, shall be signed by
27 the purchaser or his agent, shall indicate the number of the permit issued to the purchaser,
28 or that the purchaser is an out-of-state retailer, and shall indicate the general character of
29 the tangible personal property sold by the purchaser in the regular course of business. The
30 certificate shall be substantially in such form as the state tax commission may prescribe.

31 (f) If a purchaser who gives a resale certificate makes any storage or use of the property
32 other than retention, demonstration or display while holding it for sale in the regular course of
33 business, the storage or use is taxable as of the time the property is first so stored or used.

34 (g) Any person violating any provision of this section is guilty of a misdemeanor and
35 punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall
36 constitute a separate offense.

37 (h) It shall be presumed that tangible personal property shipped or brought to this state
38 by the purchaser was purchased from a retailer, for storage, use or other consumption in this
39 state.

40 (i) It shall be presumed that tangible personal property delivered outside this state to a
41 purchaser known by the retailer to be a resident of this state was purchased from a retailer
42 for storage, use, or other consumption in this state. This presumption may be controverted
43 by evidence satisfactory to the state tax commission that the property was not purchased for
44 storage, use, or other consumption in this state.

45 (j) When the tangible personal property subject to use tax has been subjected to a general
46 retail sales or use tax by another state of the United States in an amount equal to or greater

than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned ~~motor~~ vehicles or personally owned aircraft by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

SECTION 2. That Section 63-3622GG, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622GG. AIRCRAFT. There is exempted from the taxes imposed by this chapter:

(1) The sale, lease, purchase, or use of aircraft primarily used to ~~transport passengers or freight for hire. This exemption includes repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of such aircraft, but does not include tools and equipment utilized in performing such remodeling, repair or maintenance; provide passenger or freight services for hire as a common carrier only if:~~

- (a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and
- (b) The aircraft is used to provide services indiscriminately to the public; and
- (c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.

(2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.

~~(23)~~ The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

- (a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

(4) Repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of aircraft described under subsections (1) and (2) of this section are exempt. Tools and equipment utilized in performing such remodeling, repair or maintenance are not exempt.